

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 United States of America,
10 Plaintiff,
11 v.
12 David Allen Harbour,
13 Defendant.
14

No. CR-19-00898-001-PHX-DLR
ORDER

15
16 Defendant David Allen Harbour asks the Court to suppress his unsworn statement
17 to the Federal Trade Commission on April 28, 2015 on the grounds that the Government
18 agreed that it would be inadmissible. (Doc. 522 at 6 n.9.) This issue was first raised in
19 footnote nine of Defendant's response to the Government's motion in limine. (Doc. 522).
20 Construing the response as a motion in limine with respect to this issue, the Court heard
21 oral argument on January 17, 2023, and took the matter under advisement.

22 The agreement, memorialized in the transcript of the interview, states:

23 [T]oday's proceeding is being taken for reference purposes
24 only.

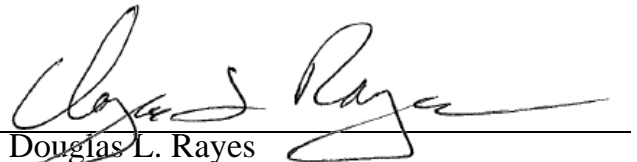
25 Mr. Harbour is not under oath today, and by agreement the
26 transcript will be deemed among the parties as inadmissible for
any purpose in the litigation including impeachment or
rebuttal.

27 And Mr. Harbour retains the right to amend, add to, or
28 otherwise revise any issues that might need follow-up after
today's interview.

1 (Doc. 522-1 at 44.) Mr. Harbour was represented by an attorney at this interview, including
2 when the above agreement was reached. Upon review, the Court finds that the parties'
3 agreement did not include the promise not to use this interview outside "the litigation."
4 Neither party argues that "the litigation," in which Defendant was not a party, includes the
5 present case. Consequently, the subject agreement does not prevent this interview from
6 being admissible in this case.

7 **IT IS ORDERED** that Defendant's construed motion in limine (Doc. 522) is
8 **DENIED.**

9 Dated this 20th day of January, 2023.

10
11 
12 Douglas L. Rayes
13 United States District Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28